

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1928 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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PARMAR NAGARBHAI PITAMBAR

Versus

MUNICIPAL COMMISSIONER

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Appearance:

MR VB GHARANIYA for Petitioners

MR HS MUNSHAW for Respondent No. 1

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CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 16/07/1999

ORAL JUDGEMENT

Sixteen petitioners of this writ petition have prayed for a writ of mandamus directing the respondent to reinstate them in service with full backwages and also to declare the respondent's oral termination order null and void.

The allegations on which this petition arose are shortly as under:-

The petitioners were appointed as daily wagers with respondent No. 2 in the year 1996. It is alleged that they served for more than 150 days. In spite of availability of work their services were terminated. Thereafter, the petitioners filed Special Civil Application No. 10608 of 1996. However, on the basis of the statement made by the respondents in that writ petition, the same was decided inasmuch as it was stated on behalf of the Corporation while hearing a group of 100 matters that work would be given to the workmen in order of their standing in the list prepared for daily wagers. The petitioners have alleged that the respondents have sufficient work. Still, no work was offered to the petitioners. Legal notice was given through their Union which also remained unattended. Asserting their seniority they have claimed that they are entitled to be reinstated and given work. The oral termination order is said to be illegal and the petitioners are entitled to the benefits of reinstatement together with full backwages.

A counter affidavit has been filed today with annexures. None appeared on behalf of the petitioners. The petition can be disposed of finally at the admission stage.

In the counter affidavit in para 6 it has rightly been stated that the petitioners have alternative remedy of approaching the Labour Court under the provisions of the Industrial Disputes Act, 1947. From the writ petition itself it appears that this alternative remedy which is very efficacious remedy was not availed of by the petitioners. On the other hand they have rushed to this court claiming a writ of mandamus. Looking to the deposition in the counter affidavit, on the facts and circumstances of the case, even on merit the writ of mandamus cannot be issued. Thus, the writ fails on one ground that alternative remedy is available which was not availed of by the petitioners.

Coming to the merits of the case, the counter affidavit is sufficient to meet the allegations of the petitioners in the writ petition that they had worked for more than 150 days. In para 4 of the counter affidavit it is clearly stated and deposed that no petitioner had worked for more than 152 days. A list showing the details of work and engagement of the petitioners on daily wages has been annexed with the counter affidavit. There is no rejoinder to this counter affidavit. As such what to speak of the petitioners working for more than 240 days they have not worked even for more than 152 days

and as such and also since the work was not available, the daily wagers were likely to be ceased and were rightly ceased by the respondents.

Nothing has been concealed in the counter affidavit. Previous pending civil litigations have also been highlighted in para 5 of the counter affidavit, so also the order passed by this court in more than 100 alike matters of this nature. From this paragraph it is clear that Civil Suit was pending in the City Civil Court, Ahmedabad, against preparation of waiting list by the Municipal Corporation of Ahmedabad for daily wagers. In the said Civil Suit stay order was granted initially against the operation of the waiting list. The stay order was vacated in the year 1996. It was decided by the Municipal Commissioner to operate the said list and accordingly the petitioners were not continued after 26.9.1996 and in all only 20 labourers who were on the waiting list were employed as daily wagers. As there was no further work, the petitioners could not be continued after 26.9.1996. In view of the above material furnished by the respondents it cannot be said that the action of the respondents in dismissing the petitioners who are daily wagers was illegal. There is no substance in this writ petition which is hereby dismissed. No order as to costs.

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